



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 230726-0175]

RIN 0648-BM13

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Resources of the Gulf of Mexico; Commercial Trip Limit for Gray Triggerfish

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS implements a management measure through this final rule as described in a framework action under the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico. This final rule increases the commercial trip limit for gray triggerfish in the Gulf of Mexico from 16 fish to 25 fish. The purpose of this action is to increase the commercial trip limit to allow commercial fishermen the opportunity to harvest the commercial annual catch target of gray triggerfish.

DATES: This final rule is effective on September 11, 2023.

ADDRESSES: An electronic copy of the framework document that contains an environmental assessment and a Regulatory Flexibility Act (RFA) analysis, and provides the rationale for this final rule, is available from the Southeast

Regional Office website at

<https://www.fisheries.noaa.gov/action/modification-gray-triggerfish-commercial-trip-limits>. The proposed rule for this action is available from the same Southeast Regional Office website or from www.regulations.gov by searching "NOAA-NMFS-2023-0044."

FOR FURTHER INFORMATION CONTACT: Peter Hood, NMFS Southeast Regional Office, telephone: 727-824-5305, email: peter.hood@noaa.gov.

SUPPLEMENTARY INFORMATION: The Gulf of Mexico Fishery Management Council (Council) manages reef fish in Federal waters of the Gulf of Mexico (Gulf) under the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (Reef Fish FMP or FMP). The Gulf Council prepared the Reef Fish FMP, and NMFS implements the FMP through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) (16 U.S.C. 1801 *et seq.*).

On May 5, 2023, NMFS published a proposed rule in the **Federal Register** for the framework action and requested public comment (88 FR 29048). The proposed rule and the framework action outline the rationale for the action contained in this final rule. A summary of the management measure described in the framework action and implemented by this final rule is provided below.

Background

The Magnuson-Stevens Act requires NMFS and regional fishery management councils to prevent overfishing and achieve, on a continuing basis, the optimum yield from federally managed fish stocks. These mandates are intended to ensure fishery resources are managed for the greatest overall benefit to the nation, particularly with respect to providing food production and recreational opportunities, and protecting marine ecosystems.

Gray triggerfish are managed under the Reef Fish FMP, and are harvested by commercial and recreational fishermen in the Gulf. The stock was determined to be undergoing overfishing according to the results of the 2006 Southeast Data, Assessment, and Review (SEDAR) 9 stock assessment. Based on the criteria selected by the Council in Amendment 30A to the FMP, the gray triggerfish stock was also considered overfished. Therefore, NMFS implemented a gray triggerfish rebuilding plan through Amendment 30A, as well as annual catch limits (ACLs), annual catch targets (ACTs), and accountability measures (73 FR 38139, July 3, 2008). Amendment 30A also established the current allocation of the stock ACL as 21 percent for the commercial sector and 79 percent for the recreational sector. The 2011 SEDAR 9 Update Assessment found that gray triggerfish were still overfished and undergoing overfishing. NMFS published a final temporary rule (77 FR 28308, May 14, 2012) that reduced the commercial and recreational ACLs and ACTs to

end overfishing while the Council developed Amendment 37 to the FMP. Amendment 37 established a plan for gray triggerfish to rebuild the stock in 5 years and the implementing final rule reduced the ACLs and ACTs for gray triggerfish (78 FR 27084, May 9, 2013). Amendment 37 also established the first commercial trip limit of 12 gray triggerfish to reduce commercial landings. The commercial trip limit is the amount of the applicable species that may be possessed on the vessel, or landed, purchased, or sold from a vessel per day (50 CFR 622.43). The Council decided to establish the commercial trip limit in numbers of fish instead of weight based on recommendations made by the Council's Law Enforcement Advisory Panel, who advised it would be difficult to enforce a low poundage limit of fish per trip, e.g., if a commercial trip limit was set at less than 75 lb (34 kg). All weights in this final rule are given in round weight.

In 2017, the Council developed Amendment 46 to the Reef Fish FMP in response to the 2015 SEDAR 43 stock assessment. The assessment indicated the gray triggerfish stock was not experiencing overfishing, but was not rebuilt and remained overfished. Amendment 46 specified a new rebuilding timeline, and revised ACLs and ACTs. Commercial landings per trip were analyzed to determine the impact of changing the trip limit because the commercial sector was often harvesting gray triggerfish below its ACT since the

implementation of the 12-fish commercial trip limit. The analyses supported an increase of the commercial trip limit to 16 fish to provide a better opportunity for the commercial sector to catch its ACT while the gray triggerfish stock continued to rebuild (82 FR 59523, December 15, 2017).

In 2017, the Council also developed Amendment 44 to the Reef Fish FMP. Amendment 44 reduced the overfished thresholds for gray triggerfish and six other reef fish species to reduce the likelihood that stock status changes between overfished and not overfished would occur frequently as a result of scientific uncertainty or natural fluctuations in biomass levels (82 FR 61487, December 28, 2017). Although this action resulted in the determination that gray triggerfish was no longer overfished, the rebuilding plan remained in place because the rebuilding target, which is the biomass that produces maximum sustainable yield, had not been achieved.

In 2020, the Council's Scientific and Statistical Committee (SSC) reviewed an interim analysis of the gray triggerfish stock conducted by the NMFS Southeast Fisheries Science Center. The analysis suggested an increasing biomass trend of the gray triggerfish stock could support a greater harvest. The Council's SSC determined the interim analysis was suitable for providing sufficient catch advice to update the acceptable biological catch (ABC), and the

SSC recommended an increase in the ABC. As a result, the Council increased the ACLs and ACTs consistent with the ABC increase through a framework action under the Reef Fish FMP. The final rule, implemented on July 29, 2021, increased the commercial ACL for gray triggerfish from 64,100 lb (29,075 kg) to 95,949 lb (43,522 kg) and the commercial ACT increased from 60,900 lb (27,624 kg) to 88,273 lb (40,040 kg) based on the current sector allocations (86 FR 34159, June 29, 2021).

Since implementation of the 16-fish trip limit in 2018, commercial landings have been below the commercial ACL and ACT, with the exception of 2018 when landings reached 100.9 percent of the ACL. Additionally, since the most recent ACL and ACT increase in 2021, commercial landings in 2021 and preliminary 2022 commercial landings were 45 and 47 percent, respectively, of the sector's ACL, and 49 and 51 percent, respectively, of the sector's ACT.

During public testimony at meetings of the Council and the Council's Reef Fish Advisory Panel, commercial industry stakeholders indicated that the 16-fish trip limit is still limiting commercial landings and gray triggerfish are only landed incidentally when targeting other species. As a result, the commercial industry stakeholders requested the Council increase the trip limit to reduce discards when encountering gray triggerfish and allow for increased harvest of these fish to make it worthwhile to retain them

when they are encountered. Analyses of alternatives increasing the trip limit to 20, 25, and 30 fish indicated that increasing the trip limit is not expected to result in an early closure of the commercial harvest of gray triggerfish. The Council selected the 25-fish commercial trip limit based on the advice of its Reef Fish Advisory Panel, which advocated for a conservative approach that allows for an increased trip limit but reduces the likelihood of an in-season closure that may occur with a higher trip limit.

Management Measure Contained in this Final Rule

This final rule will increase the Gulf gray triggerfish commercial trip limit from 16 fish to 25 fish. Although projections developed for the framework action indicated that this trip limit would increase annual commercial landings of gray triggerfish by 33 percent, the same projections estimated the commercial season would stay open through each fishing year, with the exception of the existing seasonal closure from June 1 through July 31.

Comments and Responses

NMFS received comments from 13 individuals, fishing organizations, and a seafood dealer on the proposed rule for the framework action. Nine comments were in support of the proposed rule, three comments were opposed to the proposed rule, and one comment that neither supported or opposed the proposed rule.

A summary of the public comments in opposition to the action follows, along with NMFS' responses. NMFS made no changes to the action based on public comment.

Comment 1: The commenter supported this action but also felt that a commercial trip limit of 28 to 32 gray triggerfish could also work and still not result in a commercial ACL overage.

Response: The Council considered alternatives to increase the commercial trip limit to 30 and 40 gray triggerfish during the development of the framework action, and heard public testimony that the trip limit should be increased as high as 40 fish. However, the Council was concerned that if the commercial trip limit was increased too much from the limit of 16 fish, more commercial fishermen would begin to harvest gray triggerfish. If enough additional harvest occurred, the commercial sector would be at an increased risk of an early season closure, which the Council wanted to avoid. Therefore, the Council removed the alternative for a 40-fish commercial trip limit from the framework action and selected a more conservative approach as its preferred alternative for revising the trip limit. The Council indicated that an increase to a 25-fish trip limit would allow more opportunity for the commercial sector to harvest its ACT, but not exceed its ACL, and maintain the gray triggerfish stock rebuilding timeline.

Comment 2: Three commenters expressed opposition to an increase in the commercial "limit" or "commercial harvest" because there is no proposed increase for the recreational sector. One commenter asked if an increase in the commercial trip limit meant there would also be an increase in the recreational limit.

Response: This final rule is not changing the commercial ACL or ACT for gray triggerfish. This rule is only increasing the maximum number of gray triggerfish that commercial fishermen can harvest per trip, because commercial landings have been below the established commercial catch limits since 2019. Regarding the request for an increase in the recreational limit, the problem addressed in this framework action and proposed rule occurs only in the commercial sector, and the Council did not address recreational management of gray triggerfish in this action. Therefore, any adjustment to recreational management measures for gray triggerfish is outside the scope of this final rule.

Classification

Pursuant to section 304(b)(3) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this final rule is consistent with the framework action, the Reef Fish FMP, the Magnuson-Stevens Act, and other applicable laws.

This final rule has been determined to be not

significant for purposes of Executive Order 12866.

The Magnuson-Stevens Act provides the legal basis for this rule. No duplicative, overlapping, or conflicting Federal rules have been identified. A description of this final rule, why it is being implemented, and the purpose of this final rule are contained in the **SUMMARY** and **SUPPLEMENTARY INFORMATION** sections of this final rule.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not required and none was prepared.

This final rule contains no information collection requirements under the Paperwork Reduction Act of 1995.

List of Subjects in 50 CFR Part 622

Fish, Fisheries, Gray triggerfish, Gulf of Mexico.

Dated: July 26, 2023.

Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory

Programs,
National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS amends
50 CFR part 622 as follows:

**PART 622--FISHERIES OF THE CARIBBEAN, GULF OF MEXICO, AND
SOUTH ATLANTIC**

1. The authority citation for part 622 continues to
read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 622.43, revise paragraph (b) to read as
follows:

§ 622.43 Commercial trip limits.

* * * * *

(b) *Gray triggerfish* - 25 fish. The commercial trip
limit applies until the commercial quota specified in §
622.39(a)(1)(vi) is reached, which is equal to the
commercial ACT. See § 622.39(b) for the limitations
regarding gray triggerfish after the commercial quota is
reached.

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